

1 DOUGLAS E. LUMISH (Bar No. 183863)
doug.lumish@lw.com
2 JEFFREY G. HOMRIG (Bar No. 215890)
jeff.homrig@lw.com
3 GABRIEL S. GROSS (Bar No. 254672)
gabe.gross@lw.com
4 NIKOLAUS A. WOLOSZCZUK (Bar No. 286633)
nick.woloszczuk@lw.com
5 LATHAM & WATKINS LLP
140 Scott Drive
6 Menlo Park, California 94025
Tel: (650) 328-4600; Fax: (650) 463-2600
7

8 JOSEPH. H. LEE (Bar No. 248046)
joseph.lee@lw.com
9 LATHAM & WATKINS LLP
750 Town Center Drive, 20th Floor
Costa Mesa, California 92626
10 Tel: (714) 540-1253; Fax: (714) 755-8290

11 MICHAEL B. EISENBERG (*pro hac vice*)
michael.eisenberg@lw.com
12 LATHAM & WATKINS LLP
885 Third Avenue
13 New York, New York 10022-4834
Tel: (212) 906-1200; Fax (212) 751-4864
14

15 *Attorneys for Plaintiffs/Counterclaim Defendants*
TransPerfect Global, Inc.; TransPerfect Translations
International, Inc.; and Translations.com, Inc.
16

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION
20

21 TRANSPERFECT GLOBAL, INC.,
TRANSPERFECT TRANSLATIONS
22 INTERNATIONAL, INC., AND
TRANSLATIONS.COM, INC.,
23

Plaintiffs/Counterclaim-Defendants,
24
v.
25
MOTIONPOINT CORPORATION,
26
Defendant/Counterclaimant.
27

Case No. CV 10-02590 CW (JCS)

TRANSPERFECT'S NOTICE OF BILL OF COSTS AND BILL OF COSTS

Judge: Hon. Claudia Wilken

TO THE CLERK OF THE COURT, TO DEFENDANT AND COUNTERCLAIM
PLAINTIFF MOTIONPOINT CORPORATION, AND TO COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 54(d)(1) and Civil L.R. 54-1, Plaintiffs and Counterclaim Defendants TransPerfect Global, Inc., TransPerfect Translations International, Inc., and Translations.com, Inc. (collectively “TransPerfect”) hereby submit their Bill of Costs. TransPerfect’s Bill of Costs is based on this Notice, the summary of costs below, the accompanying declaration of Nikolaus A. Woloszczuk and attached exhibits with the itemized costs, the pleadings, orders and papers on file herein, and any matters of which the Court may take judicial notice, and additional evidence and argument as may be later presented.

Bill of Costs

On November 15, 2013, this Court entered judgment in the above-entitled action against Defendant and Counterclaimant MotionPoint Corporation, and ordered that TransPerfect recover its costs. (D.N. 467.) Pursuant to Fed. R. Civ. P. 54(d)(1) and Civil L.R. 54-1, TransPerfect respectfully requests the Clerk to tax the following as costs:

Civil L.R. 54-3(a) (Fees for Filing and Service of Process)	\$16,206.90
Civil L.R. 54-3(b) (Reporters' Transcripts)	\$20,449.57
Civil L.R. 54-3(c) (Depositions)	\$111,091.83
Civil L.R. 54-3(d) (Reproduction and Exemplification)	\$94,627.81
Civil L.R. 54-3(e) (Witness Expenses)	\$10,418.36
Total Costs	\$252,794.47

1. Clerk's Filing Fees and Service of Subpoenas

28 U.S.C. § 1920(1) permits recovery of “fees of the clerk and marshal,” in this district this includes both fees paid directly to the Court Clerk and the costs of private service of

1 subpoenas. Civ. L.R. 54-3(a)(2). TransPerfect incurred clerk fees of \$1,475 for filing court
 2 documents and pro hac vice admissions, and \$14,731.90 for service of subpoenas. While there is
 3 no rule regarding pro hac vice fees in the 9th Circuit, this Court has allowed recovery of such
 4 fees. *Kalitta Air, LLC v. Cent. Tex. Airborne Sys.*, No. C 96-2494, 2012 U.S. Dist. LEXIS
 5 172679, *8 (N.D. Cal. Dec. 5, 2012). These necessary costs are documented in Exhibit A and
 6 summarized below.

7 2. Reporters' Transcripts of Hearings

8 28 U.S.C. § 1920 allows recovery of “fees for printed or electronically recorded
 9 transcripts necessarily obtained for use in the case.” Civil L.R. 54-3(b)(1) additionally specifies
 10 that “the costs of transcripts necessarily obtained for an appeal is allowable.” Courts in this
 11 district have found transcripts taxable where the hearing “was of paramount importance in the
 12 case.” *See MEMC Elec. Materials v. Mitsubishi Materials*, No. C-01-4925, 2004 U.S. Dist.
 13 LEXIS 29359, *8-9 (N.D. Cal. Oct. 22, 2004) (approving of transcripts costs for Markman
 14 hearing); *eBay Inc. v. Kelora Sys., LLC*, C 10-4947, 2013 WL 1402736, *11 (N.D. Cal. Apr. 5,
 15 2013) (allowing cost of transcript from summary judgment and non-infringement hearing).

16 TransPerfect also incurred costs obtaining transcripts for each day of trial, these
 17 transcripts were necessarily obtained in anticipation of an appeal which MotionPoint has
 18 confirmed is forthcoming. Paul Demery, *In a Web Translation Patent Battle, the Jury Sides with*
 19 *TransPerfect*, July 29, 2013, [http://www.internetretailer.com/mobile/2013/07/29/jury-sides-](http://www.internetretailer.com/mobile/2013/07/29/jury-sides-transperfect-web-translation-patent-battle)
 20 transperfect-web-translation-patent-battle (MotionPoint “said in a statement that it ‘intends to
 21 appeal the jury’s verdict and will pursue all other avenues to protect its intellectual property.’”).
 22 *See Affymetrix, Inc. v. Multilyte Ltd.*, No. C 03-03779, 2005 U.S. Dist. LEXIS 41177, *5-6 (N.D.
 23 Cal. Aug. 26, 2005) (“It was reasonable for Affymetrix to incur the expense of transcripts for all
 24 court proceedings, given that this case was so contentiously litigated. . . . It is only expected that
 25 both parties found it necessary to obtain transcripts for appeal.”) (emphasis added); *Asyst Techs.*
 26 *v. Emtrak Inc.*, No. C 98-20451, 2009 U.S. Dist. LEXIS 23834, *5 (N.D. Cal. Mar. 13, 2009)
 27 (allowing recovery of costs for daily trial transcripts in a patent infringement trial because the
 28 prevailing party “knew with virtual certainty that however the trial came out the losing party

1 would appeal.”) Given the parties’ relationship as competitors, and considering the amount of
 2 damages at stake and the likelihood that an injunction would issue, it was reasonable for
 3 TransPerfect to obtain daily transcripts in anticipation of an appeal. A spreadsheet of these costs
 4 and true and correct copies of invoices supporting these costs are attached as Exhibit B to the
 5 Declaration of Nikolaus A. Woloszczuk.

6 3. Depositions

7 Civil L.R. 54-3(c) permits the recovery of “the cost of an original and one copy of any
 8 deposition (including videotaped depositions) taken for any purpose in connection with the
 9 case.” Courts in this district have awarded costs for both stenographic transcripts and copies of
 10 video from the same deposition, acknowledging that “[i]n patent cases, costs for both have been
 11 allowed as commonplace practice.” *eBay*, 2013 WL 1402736, at *11 (internal quotation marks
 12 and citation omitted); *see also Plantronics, Inc. v. Aliph, Inc.*, C 09-01714, 2012 WL 6761576,
 13 *7 (N.D. Cal. Oct. 23, 2012). Civil L.R. 54-3(c)(3) also allows recovery of the cost of
 14 “reproducing exhibits to depositions.” A spreadsheet of these costs and true and correct copies
 15 of invoices supporting these costs are attached as Exhibit B to the Declaration of Nikolaus A.
 16 Woloszczuk.

17 4. Reproduction and Exemplification of Discovery Documents

18 Under 28 U.S.C. § 1920(3-4) and Civil L.R. 54-3(d), the costs of reproducing discovery
 19 documents including certain costs associated with electronic discovery production are taxable.
 20 *In re Ricoh Co. Patent Litig.*, 661 F.3d 1361, 1365 (Fed. Cir. 2011) (“the costs of producing a
 21 document electronically can be recoverable under section 1920(4.”); *eBay*, 2013 WL 1402736,
 22 at *7 (allowing recovery of electronic discovery costs such as “scanning paper documents,
 23 electronic scanning and conversion to PDF, TIFF conversion, OCR, image endorsement/Bates
 24 stamping, slip sheet preparation, blowback scanning paper documents, media hardware used for
 25 production, electronically stamping Bates numbers, slipsheet preparation, blowback preparation,
 26 and OCR conversion.”).

27 In *Plantronics*, the court found certain e-discovery costs (TIFF conversion and OCR
 28 processing) to be recoverable, in part, because the parties had reached an agreement about the

1 form of production. 2012 WL 6761576, *15-16. TransPerfect and MotionPoint reached a
 2 similar agreement on the form of electronic discovery, agreeing to production in TIFF format,
 3 OCR processing, the provision of suitable load files, the provision of native files where
 4 necessary or requested, and the preservation of metadata. (Joint Case Management Conference
 5 Statement, D.N. 43 at 2-3.) A spreadsheet of these costs and true and correct copies of invoices
 6 supporting these costs are attached as Exhibit C to the Declaration of Nikolaus A. Woloszczuk.

7 5. Reproduction and Exemplification of Government Records, and Trial Exhibits

8 Civil L.R. 54-3(d)(1) permits recovery of costs incurred “reproducing and certifying or
 9 exemplifying government records.” Civil L.R. 54-3(d)(4) also permits recovery of costs for
 10 “reproducing trial exhibits . . . to the extent that a Judge requires copies to be provided.” The
 11 Court’s standing order required the production of all trial exhibits in this action. TransPerfect
 12 has incurred necessary costs reproducing government records for the patents-in-suit as well as
 13 certain prior art patents and for providing the Court with copies of trial exhibits. TransPerfect
 14 also incurred costs preparing demonstrative exhibits and other visual aids to assist the jury and
 15 the Court in understanding the issues at trial. These costs are taxable under Civil L.R. 54-
 16 3(d)(5). The costs submitted for Latham & Watkins’ technical analyst are a true and accurate
 17 reflection of the hours billed to TransPerfect for time spent at trial presenting and being available
 18 to present trial exhibits and graphics using courtroom technology. A spreadsheet of these costs
 19 and true and correct copies of invoices supporting these costs are attached as Exhibit C to the
 20 Declaration of Nikolaus A. Woloszczuk.

21 6. Witness Expenses

22 Civil L.R. 54-3(e) allows for the recovery of a witness’s per diem fee, subsistence, and
 23 travel expenses as provided for by 28 U.S.C. § 1821. TransPerfect’s advanced per diem and
 24 mileage costs at the time it served subpoenas on MotionPoint and third-party witnesses. These
 25 costs are reflected in the same invoices submitted for recovery of the cost of service of
 26 subpoenas but are reproduced separately. TransPerfect also incurred additional witness
 27 expenses for Eric Silberstein’s deposition and for the travel cost of bringing certain witnesses to
 28 trial. A spreadsheet of these costs and true and correct copies of invoices supporting these costs

1 are attached as Exhibit D to the Declaration of Nikolaus A. Woloszczuk.

2
3 Dated: November 29, 2013

Respectfully submitted,

4 LATHAM & WATKINS LLP

5 By /s/ Nikolaus A. Woloszczuk
6 Nikolaus A. Woloszczuk

7 Attorney for Plaintiffs/Counterclaim
8 Defendants TransPerfect Global, Inc.;
9 TransPerfect Translations International, Inc.;
and Translations.com, Inc.

10
11 SV\1226726.2
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28